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EXAMINER

PITARO, RYAN F

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PAUL W. FORNEY, RASHESH MODY, DAVE TRAN,
PRAMOD THAZHICHAYIL, VIJAY ANAND,
and KIMSON Q. NGUYEN

Appeal 2009-000054
Application 09/955,473
Technology Center 2100

Decided:¹ June 22, 2009

Before HOWARD B. BLANKENSHIP, ST. JOHN COURTENAY III, and
STEPHEN C. SIU, *Administrative Patent Judges*.

COURTENAY, Administrative Patent Judge.

DECISION ON APPEAL

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 CFR § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Data (electronic delivery).

STATEMENT OF THE CASE

This is a decision on appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1-20. We have jurisdiction under 35 U.S.C. § 6(b). An oral hearing on this appeal was held on June 11, 2009.

We AFFIRM.

THE INVENTION

Appellants' invention relates generally to the field of computerized manufacturing/process control networks. More particularly, Appellants' invention relates to systems for providing access by supervisory level applications and users to manufacturing/process control information. Appellants' present invention further concerns the provision of such information from multiple, potentially differing sources having differing data types. (Spec. 1).

Claim 1 is illustrative:

1. A customer-configurable plant process observation portal server for collecting plant process information, in accordance with a user designated set of information sources, and for disseminating the information to users via network connections, the portal server comprising:

an extensible information source registry for storing at least identification information corresponding to an extensible set of plant information sources accessed via the portal server;

a portal server data interface, accessible via remote networked stations, providing user access to plant information associated with the set of designated plant information sources; and

a portal configuration utility enabling a user to at least designate a new plant information source via a configuration interface, the new plant information source thereafter being added to the extensible set of plant information sources.

PRIOR ART

The Examiner relies upon the following references as evidence in support of the rejections:

Khan	US 2002/0046254 A1	Apr. 18, 2002
Polizzi	US 2002/0052954 A1	May 2, 2002
Wewalaarachchi	US 6,571,140 B1	May 27, 2003

THE REJECTIONS

1. The Examiner rejected claims 1-3, 5, 6, and 8-20 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Khan and Wewalaarachchi.
2. The Examiner rejected claims 4 and 7 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Khan, Wewalaarachchi, and Polizzi.

GROUPING OF CLAIMS

Appellants argue claims 1, 2, 3, 4, 6, 7, 9, 10, 11, and 16 as a group. (App. Br. 6-9). We will, therefore, treat claims 2, 3, 4, 6, 7, 9, 10, 11, and 16 as standing or falling with representative claim 1.

Appellants argue claims 5 and 8 as a group. (App. Br. 8-9). We will, therefore, treat claim 5 as standing or falling with representative claim 8.

Appellants argue claims 12-15 and 17-20 as a group. (App. Br. 9). We will, therefore, treat claims 13-15 and 17-20 as standing or falling with representative claim 12.

We accept Appellants' grouping of the claims. *See* 37 C.F.R. § 41.37(c)(1)(vii) ("Notwithstanding any other provision of this paragraph, the failure of appellant to separately argue claims which appellant has grouped together shall constitute a waiver of any argument that the Board must consider the patentability of any grouped claim separately.").

ISSUES

Based upon our review of the administrative record, we have determined that the following issues are dispositive in this appeal:

1. Have Appellants shown the Examiner erred by relying upon the June 16, 2000 filing date of U.S. Pat. 6,438,575 (which is the parent application to Khan's published CIP patent application, US 2002/0046254 A1)?
2. Have Appellants shown the Examiner erred by improperly combining the Khan and Wewalaarachchi (and Polizzi) references?
3. Have Appellants shown the Examiner erred in finding that the combination of Khan and Wewalaarachchi teaches or suggests a portal server comprising an extensible set of data handlers for processing differing types of data from a set of plant information sources accessed via the portal server? (Representative claims 8 and 12).

PRINCIPLES OF LAW

“What matters is the objective reach of the claim. If the claim extends to what is obvious, it is invalid under § 103.” *KSR Int’l Co. v. Teleflex, Inc.*, 550 U.S. 398, 419 (2007). To be nonobvious, an improvement must be “more than the predictable use of prior art elements according to their established functions.” *Id.* at 417.

Invention or discovery is the requirement which constitutes the foundation of the right to obtain a patent . . . unless more ingenuity and skill were required in making or applying the said improvement than are possessed by an ordinary mechanic acquainted with the business, there is an absence of that degree of skill and ingenuity which constitute the essential elements of every invention.

Dunbar v. Myers, 94 U.S. 187, 197 (1876) (citing *Hotchkiss v. Greenwood*, 52 U.S. 248, 267 (1850)) (*Hotchkiss v. Greenwood* was cited with approval by the Supreme Court in *KSR*, 550 U.S. at 406, 415, 427).

“[D]uring examination proceedings, claims are given their broadest reasonable interpretation consistent with the specification.” *In re Hyatt*, 211 F.3d 1367, 1372 (Fed. Cir. 2000).

Appellants have the burden on appeal to the Board to demonstrate error in the Examiner’s position. See *In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006). Therefore, we look to Appellants’ Briefs to show error in the Examiner’s proffered prima facie case.

FINDINGS OF FACT

In our analysis *infra*, we rely on the following findings of fact (FF) that are supported by a preponderance of the evidence:

THE KHAN REFERENCE

1. Khan teaches an “invention [that] allows a user to create an information portal whose source and content is completely customizable . . . [Khan’s] invention allows the user to completely configure both the source and content that he/she wants on his/her own portal.” (Para. [0078]).

THE WEWALAARACHCHI REFERENCE

2. Wewalaarachchi teaches that “real-time systems are widely applied to diverse applications domains such as manufacturing, facilities management, power system management, financial analysis systems, and telecommunications.” (Col. 1, ll. 33-37).
3. Wewalaarachchi teaches data objects that are created by an object server responsive to users (subscribers) that indicate an interest in subscribing to information that is provided in real-time from a device (202 or 204) in the form of <name, value> pairs. (Col. 7, ll. 41-54).
4. Wewalaarachchi teaches that reformatted data is provided “in the format of <name, value> pairs, where the name indicates the data source, and the value is the structured real time data. In this manner, unstructured, raw real time data from many different sources, having different and often incompatible protocols is restructured into a consistent representation and format.” (Col. 7, ll. 26-31).

APPELLANTS' SPECIFICATION

5. Appellants' Specification discloses:

An exemplary manufacturing/process control information portal server incorporating the present invention provides an extensible portal server architecture enabling developer/users to extend the capabilities of the system. A first form of such extension comprises the ability of a user to re-configure the portal server to provide information from a designated resource. A second form of extending the portal server's capabilities is adding new data handlers to support new forms/formats of data that are used to provide information from connected sources.

(Spec. 7, ll. 6-12).

ANALYSIS

ISSUE 1

We decide the question of whether Appellants have shown the Examiner erred by relying upon the June 16, 2000 filing date of U.S. Pat. 6,438,575.

At the outset, we note that U.S. Pat. 6,438,575 is the parent application to Khan's published CIP patent application, US 2002/0046254 A1, upon which the Examiner relies. Appellants contend that Khan's published CIP patent application (US 2002/0046254) is not prior art (App. Br. 6).

In particular, Appellants contend in the principal Brief that Khan's published patent application does not have priority over (and therefore is not applicable prior art) to the claims on appeal because the disclosure upon which the rejections rely is not provided in the parent application to Khan's published patent application. (App. Br. 5). Specifically, in the principal Brief Appellants question whether paragraphs [0005, 0077-79] of Khan's

published patent application (US 2002/0046254 A1) are supported by the parent application to Khan (U.S. Pat. 6,438,575).

However, in the Reply Brief Appellants agree that at least paragraphs [0078-79] of Khan's published patent application (US 2002/0046254 A1) are supported by the disclosure in the parent application (U.S. Pat. 6,438,575) (Reply Br. 5). We note that the Examiner does not rely on paragraph [0005] of Khan's published CIP patent application (US 2002/0046254 A1) in the rejections set forth in the Answer. Therefore, we find the issue of the prior art status of the Khan published application to be moot because Appellants do not contest the Examiner's reliance (in the Answer) on material in the Khan published application as prior art. (Reply Br. 5).

ISSUE 2

We decide the question of whether Appellants have shown the Examiner erred in finding that the Examiner erred by improperly combining the Khan and Wewalaarachchi references.

Appellants contend that "[s]ubstantial differences exist between Khan's system and one that is suitable for providing access to non-public, highly sensitive plant process information that is provided in a variety of forms by a variety of plant information sources." (App. Br. 8). Appellants further aver that "[t]he Internet-accessible page/site content environment within which the disclosed Kahn system operates is incomparable to a plant process environment disclosed/claimed in the present application. Therefore, the claimed plant process portal server, including a configuration utility

supporting extending the set of plant information sources accessed via the portal server, is not suggested by the combined teachings of Kahn and Wewalaarachchi.” (*Id.*).

We have considered Appellants’ arguments but do not find them persuasive. We note that the Examiner merely relies on the secondary Wewalaarachchi reference for its teaching of a plant process (Ans. 4, FF 2), and data objects (i.e., data handlers) (Ans. 5, FF 3). We particularly note that the “non-public, highly sensitive plant process information” argued by Appellants is not recited in any of the claims on appeal (*Id.*). We decline to read such limitations into the claims. We do not dispute Appellants’ argument that access to plant process information may be restricted in actual practice; however, we conclude that the plain language of the claims on appeal does not preclude open access to an information portal by users, such as taught by Khan (FF 1), as modified by Wewalaarachchi (FF 2-3).

Moreover, we find the Examiner’s proffered combination of Khan and Wewalaarachchi (and Khan, Wewalaarachchi, and Polizzi) is merely a combination of familiar elements (e.g., Khan’s information portal that provides remote access (FF 1), and Wewalaarachchi’s plant information (FF 2) and data objects (FF 3)) according to known methods that yields a predictable result. *See KSR*, 550 U.S. at 417. In addition, Appellants have provided no evidence to show that combining the respective familiar elements of the cited references in the manner proffered by the Examiner was “uniquely challenging or difficult for one of ordinary skill in the art” (*see Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007) (citing *KSR*, 550 U.S. at 418)). Lastly, we are in general

agreement with the Examiner's proffered rationale for combining the references, as set forth on pages 8-9 of the Answer. Accordingly, Appellants have not shown the Examiner erred by improperly combining the cited references.

ISSUE 3

We decide the question of whether Appellants have shown the Examiner erred in finding that the combination of Khan and Wewalaarachchi teaches or suggests a portal server comprising an extensible set of data handlers for processing differing types of data from a set of plant information sources accessed via the portal server (representative claims 8 and 12).

We begin our analysis by broadly but reasonably construing the claimed *extensible set of data handlers for processing differing types of data* in light of Appellants' Specification. *See In re Hyatt*, 211 F.3d at 1372. When we look to Appellants' Specification for *context*, we particularly note that two forms of extension are described on page 7, paragraph two, as follows:

A first form of such extension comprises the ability of a user to re-configure the portal server to provide information from a designated resource. A second form of extending the portal server's capabilities is adding new data handlers to support new forms/formats of data that are used to provide information from connected sources.

(FF 5).

We note Wewalaarachchi teaches that “*data objects* (i.e., data handlers) are created by an object server responsive to users (subscribers) that indicate an interest in subscribing to information that is provided in real-time from a device (202 or 204) in the form of <name value> pairs.” (FF 3). Therefore, we find Wewalaarachchi’s data objects (i.e., data handlers) provide subscribed information from a designated resource (i.e., device), consistent with Appellants’ disclosed first form of extension (FF 5). Regarding extending the portal server's capabilities by adding *new data handlers* to support new forms/formats of data that are used to provide information from connected sources (FF 5), we find the combination of Khan and Wewalaarachchi is at least suggestive of the claimed *extensible set of data handlers for processing differing types of data*. In particular, we find that subscribing to a real time device by a user causes new data objects (i.e., data handlers) to be created at Wewalaarachchi’s object server as necessary to service requests for different types of information from different devices (FF 3). We find the subscription information provided by Wewalaarachchi’s system is not limited to a particular type of data because Wewalaarachchi discloses that “unstructured, raw real time data from many different sources, having different and often incompatible protocols is restructured into a consistent representation and format.” (FF 4). Our reasoning here is consistent with the Examiner’s findings as set forth on page 9 of the Answer.

As for the portal server comprising *an extensible set of data handlers* (claim 8) or *a plurality of data handlers* (claim 12), we note that Khan teaches an information portal (portal server), and Wewalaarachchi teaches data objects (i.e., data handlers). The Examiner’s rejection is based upon the *combination* of cited references. We have considered Appellants arguments

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in as set forth in the Brief and Reply Brief, but find the weight of the evidence supports the Examiner's position.

CONCLUSION

Based on the findings of facts and analysis above, Appellants have not established that the Examiner erred in rejecting claims 1-20 as being obvious over the cited prior art under 35 U.S.C. §103(a).

DECISION

The Examiner's decision rejecting claims 1-20 under 35 U.S.C. § 103(a) is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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